INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Statutory provision sustaining jurisdiction	1
State statute, the validity of which is involved	2
Date of the judgment sought to be reviewed and date upon which the application for appeal was presented	3
Nature of the case	3
Cases believed to sustain the jurisdiction	7

Table of Cases Cited.

Bernheimer v. Converse, 206 U. S. 516	8, 11
Broderick, Superintendent, etc., v. Aaron, 147 Misc. (N. Y.) 854, 264 N. Y. Supp. 15	10
Broderick, Superintendent, etc., v. Adamson, 148 Misc. (N. Y.) 355, 265 N. Y. Supp. 804	10
Broderick, Superintendent, etc., v. American General Corp., 71 F. (2d) 864 (Advance Sheets, September 17, 1934)	7, 8, 10
Broderick, Superintendent, etc., v. McGuire, 174 Atl. Rep. 314, (October 6, 1934, Advance Sheets)	7, 10
Broderick, Superintendent, etc., v. Stephano, 171 Atl. Rep. 582	7, 10
Clark v. Williard, 78 L. Ed. 743	8
Converse v. Ætna National Bank, 212 U. S. 567	8
Converse v. Hamilton, 224 U. S. 243	8, 11
Giles v. Duke (C. C. A. 9th Cir.), 5 F. (2d) 952	8
Great Northern Ry. Co. v. Minnesota, 278 U. S. 503	7
Hale v. Allison, 188 U. S. 56	8
Hancock National Bank v. Farnum, 176 U. S. 640	11
Hartford Accident, etc., Co. v. Delta & Pine Land Co., 78 L. Ed. 767	11
Home Insurance Co. v. Dick, 281 U. S. 397	11
Kennedy v. Gibson, 8 Wall. 498	8
McDonald v. Thompson, 184 U. S. 71	4
Marin v. Augdeahl, 247 U. S. 142	8
Modern Woodmen of America v. Mixer, 267 U. S. 544	8
Nashville, C. & St. L. Ry. v. White, 278 U. S. 456	7
Nebbia v. New York, 78 L. Ed. 563	11
Rolfe v. Rundle, 103 U. S. 322	8
Royal Arcanum v. Green, 237 U. S. 531	11
Selig v. Hamilton, 234 U. S. 652	8
Scoville v. Thayer, 105 U. S. 159	8
Shriver v. Woodbine Bank, 285 U. S. 467	8
Sioux City Bridge Co. v. Dakota County, 260 U. S. 441	11
Studebaker v. Perry, 184 U. S. 258	8
Union Bank, In re, 204 N. Y. 313	3

Page

United States v. Knox, 102 U. S. 422 4
Van Tuyl v. Scharmann, 208 N. Y. 53 3

STATUTES AND AUTHORITIES CITED.

Constitution of the United States, Article IV, Section 1, 14th Amendment 5, 6, 7
Report to Governor of the Commissioner of Banks, December, 1907 ... 3
Report of Superintendent of Banks, N. Y., Senate Document No. 6, 131st Session, p. xxix 3
Supplement to an act entitled, "An act concerning corporations," (Revision 1896), approved April twenty-first, one thousand eight hundred and ninety-six, being Chapter 50, page 124, P. L. 1897 2
United States Code Annotated, Title 28, Section 344(a) 2

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934.

No. 528

JOSEPH A. BRODERICK, SUPERINTENDENT OF BANKS OF THE STATE OF NEW YORK,

Appellant,

vs.

MARY ROSNER, ESSIE R. STONE, CAMILLA LOWY, ET AL.

APPEAL FROM THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

STATEMENT AS TO JURISDICTION.

Joseph A. Broderick, Superintendent of Banks of the State of New York, does hereby state the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on appeal to review the judgment of the New Jersey Court of Errors and Appeals, the highest court of the State of New Jersey:

(a) The statutory provision believed to sustain the jurisdiction is as follows:

United States Code Annotated, Title 28, Section 344, paragraph (a), which provides:

> "A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, * * * where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, * * * of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

(b) The statute of New Jersey, the validity of which is involved, is an Act of the Legislature of the State of New Jersey entitled, "A Supplement to an act entitled 'An act concerning corporations' (Revision, 1896), approved April twenty-first, one thousand eight hundred and ninety-six", being Chapter 50, page 124, P. L. 1897. The pertinent provisions read as follows:

> "2. No action or proceeding shall be maintained in any court of law of this state against any stockholder, officer or director of any domestic or foreign corporation by or on behalf of any creditor of such corporation to enforce any statutory personal liability of such stockholder, officer or director for or upon any debt, default or obligation of such corporation, whether such statutory personal liability be deemed penal or contractual, if such statutory personal liability be created ~~by~~ or ~~arise from the statutes~~ or laws of any other state or foreign country, and no pending or future action or proceeding to enforce any such statutory personal liability shall be maintained in any court of this state other than in a nature of an equitable accounting for the proportionate benefit of all parties interested, to which such corporation and its legal representatives, if any, and all of its creditors and all of its stockholders shall be necessary parties.
>
> "3. This act shall take effect immediately.
>
> "Approved March 30, 1897."

(c) The date of the judgment sought to be reviewed is October 4th, 1934. The application for the allowance of an appeal was presented October 22, 1934.

(d) The nature of the case is as follows:

Plaintiff as Superintendent of Banks of the State of New York in accordance with the provisions of the laws of that State took possession of The Bank of United States, a State Banking Institution, and in accordance with the laws of New York in due course determined that the assets of the Bank were not sufficient to pay its liabilities, and in accordance with the provisions of the New York Banking Laws duly levied an assessment against the shareholders of the Bank equal to the par value of all shares held by them.

Under the New York Law, as construed by the New York Courts, this assessment is binding and conclusive upon all stockholders wherever resident.

Broderick, Superintendent, &c. v. *Adamson,* 148 Misc. (N. Y.) 353; 265 N. Y. Supp., 804;

Broderick, Superintendent, &c. v. *Aaron,* 147 Misc. (N. Y.) 854, 264 N. Y. Supp., 15.

The provisions of the New York Banking Law with relation to the determination to assess and levying and collecting assessments by the Superintendent of Banks, are very similar to the provisions of the banking laws of the United States.

Re Union Bank, 204 N. Y., 313;

Van Tuyl v. *Scharmann,* 208 N. Y., 53;

Report to Governor of the Commissioner on Banks, December 1907;

Report of Superintendent of Banks, N. Y., Senate Document No. 6, 131st Session, p. XXIX.

And the right of the Comptroller of the Currency to levy and collect assessments has repeatedly been upheld.

Kennedy v. *Gibson*, 8 Wall. 498;
Studebaker v. *Perry*, 184 U. S. 258;
McDonald v. *Thompson*, 184 U. S. 71;
United States v. *Knox*, 102 U. S. 422.

The action below was brought at law by the Superintendent of Banks against five hundred fifty-seven stockholders of said Bank resident in New Jersey to recover the assessment levied by the Superintendent of Banks in his official capacity against them, aggregating over $500,000. Plaintiff's complaint alleged, among other things, that the creditors of The Bank of United States aggregate over four hundred thousand (400,000), and are scattered throughout the United States and foreign countries, beyond the reach of process of the courts of New Jersey; that the stock of the said Bank is owned by twenty thousand, eight hundred forty-three (20,843) stockholders, residing in nearly every State of the United States, and also residing in Cuba, Greece, Switzerland, France, Monaco, Panama, Roumania, Jugo-Slavia and Italy; that the liabilities of the Bank were more than $30,000,000 in excess of assets. The capital of the Bank is divided into 1,010,000 shares of the par value of $25.00 per share, giving an aggregate capital of $25,250,000.

The defendants-appellees below moved to strike out plaintiff's complaint as

(1) Not setting forth a cause of action.

(2) Because the alleged liability set forth in the complaint is not enforceable in the Courts of New Jersey.

(3) That the laws of New Jersey prohibit the maintenance of this action in the Supreme Court of New Jersey.

Mr. Justice Parker, sitting as a single Justice, heard argument and held that the plaintiff

> "comes over into this State and endeavors by a suit at law (or rather several hundred suits at law) to recover the several amounts that he has himself assessed against the shareholders respectively. This seems to me to fly directly in the face of our statute" (referring to the statute above).

The court concluded with a statement:

> "it would seem that there should be a judgment for the moving defendants subject of course to appeal, and without prejudice to the filing of a bill in equity on the lines laid down in section 94-b of the Corporation Act" (the section bearing that designation in a pamphlet printed by the Secretary of State). "The matter might be transferred to the Court of Chancery, but the complaint would have to be reframed, I think in any event."

The court thereupon made an order that plaintiff's complaint be struck out as to the defendants named, and

> "Ordered, that judgment final be entered in favor of each of said defendants and against said plaintiff, with costs to be taxed under the direction of this Court."

Appellant took an appeal from the final judgment entered on said order of February 14, 1934, to the Court of Errors and Appeals in the Last Resort in all Causes of the State of New Jersey, alleging the following grounds of appeal, which specifically set forth the grounds here urged as showing the jurisdiction of this Court:

> "4. Said order and judgments do not give full faith and credit to the public acts, records and judicial proceedings of the State of New York within the intent and meaning of Article IV, Section 1, of the Constitu-

tion of the United States, in that the complaint in above action sets forth as the basis of relief a public act and a judicial proceeding of the State of New York within the intent and meaning of the Constitution of the United States. Said statute of the State of New Jersey, if construed as prohibitive of said action, is void under the Constitution of the United States.

"5. Said order and judgments, in effect, deny a remedy in the courts of this State upon a valid contract entered into within the jurisdiction and pursuant to the laws of a sister State, and thereby abridge the privileges and immunities of citizens of the United States and deny to the plaintiff the equal protection of the laws, in violation of the Constitution of the United States and particularly the Fourteenth Amendment thereof.

"6. Said statute of the State of New Jersey, as construed and applied by said order and judgments, is in violation of the Constitution of the United States and particularly the Fourteenth Amendment thereof, and therefore null and void.

"7. Said statute, as construed and applied by said order and judgments, in that it closes the courts of this State to plaintiff in enforcement of lawful contract rights except under impossible conditions, deprives plaintiff of its property in said contracts without due process of law, in violation of the Constitution of the United States and particularly Article V and the Fourteenth Amendment thereof. Said statute is void and said order and judgments based thereon erroneous.

"8. The complaint sets forth a cause of action depending upon defendants' contracts as stockholders of The Bank of United States, to pay assessments as and when determined pursuant to the laws of the State of New York, and such contractual obligations are not within the prohibition of said statute of New Jersey relied on by the Court in making said order and judgments.

"9. Said order and judgments, in that they deny to the plaintiff a remedy upon lawful causes of action accruing to him under the laws of a sister State, as representative of a corporation of said State, deny to the plaintiff and to said corporation the privileges and immunities of a citizen of the State of New York secured by Article IV, Section 2 of the Constitution of the United States, and said order and judgments are, therefore, erroneous."

The New Jersey Court of Errors and Appeals on September 28, 1934, filed a *per curiam* opinion affirming the judgment of the Supreme Court on the opinion of Mr. Justice Parker filed in the Supreme Court.

The cases believed to sustain the jurisdiction of this Court are as follows:

That appellant has the right to an appeal to this Court:
Nashville C. & St. L. Ry. v. *White*, 278 U. S., 456;
Great Northern Ry. Co. v. *Minnesota*, 278 U. S., 503.

The right of the plaintiff to sue at law and recover assessments levied by him against non-resident stockholders of The Bank of United States has been upheld:

In Pennsylvania:
Broderick, Superintendent, &c., v. *Stephano*, 171 Atl. Rep. 582;

In Connecticut:
Broderick, Superintendent, &c., v. *McGuire*, 174 Atl. Rep. 314 (October 6, 1934, Advance Sheets).

In the Circuit Court of Appeals (4th Cir.) (Maryland):
Broderick, Superintendent, &c., v. *American General Corp.*, 71 F. (2d) 864 (Advance Sheets, September 17, 1934).

New Jersey is the only State which has so far finally denied plaintiff the right to recover.

Plaintiff has brought or is required to bring such actions in approximately thirty States of the United States.

That plaintiff's action is at law and not in equity:

Broderick, Superintendent, &c., v. *American General Corporation*, 71 F. (2d) 864 (C. C. A. 4th Cir.).
Kennedy v. *Gibson*, 8 Wall. 498;
Studebaker v. *Perry*, 184 U. S. 258;
Hale v. *Allison*, 188 U. S. 56;
Shriver v. *Woodbine Bank*, 285 U. S. 467.

The liability of the stockholders is to be determined by the laws of New York, the domicile of the Bank, and where and under whose laws the assessment was made.

Converse v. *Hamilton*, 224 U. S. 243;
Selig v. *Hamilton*, 234 U. S. 652;
Bernheimer v. *Converse*, 206 U. S. 516;
Converse v. *Ætna National Bank*, 212 U. S. 567.

Plaintiff as Superintendent of Banks is the statutory successor of the corporation for the purpose of winding up its affairs.

Rolfe v. *Rundle*, 103 U. S. 322;
Clark v. *Williard*, 78 L. Ed. 743.

The assessment levied by plaintiff as Superintendent of Banks of New York under and according to the laws of New York, is entitled to full faith and credit in the several States.

Converse v. *Hamilton*, 224 U. S. 243;
Rolfe v. *Rundle*, 103 U. S. 322;
Marin v. *Augdeahl*, 247 U. S. 142;
Giles v. *Duke* (C. C. A. 9th Cir.), 5 F. (2d) 952;
Scoville v. *Thayer*, 105 U. S. 159;
Modern Woodmen of America v. *Mixer*, 267 U. S. 544.

The New Jersey statute as applied to this action by the New Jersey courts requires plaintiff to file a bill in equity

for an equitable accounting, which has already been made by plaintiff in his official capacity in New York in compliance with the New York statute. It also requires plaintiff to join as necessary parties over four hundred thousand creditors of The Bank of United States, the vast majority of whom reside in States other than New Jersey, and upon whom it is impossible to effect personal service, or for the courts of New Jersey to obtain jurisdiction over unless they voluntarily appear in the litigation. The statute also requires plaintiff to join as necessary parties to the litigation all of the stockholders of The Bank of United States at the date of its closing. The complaint alleges that there were some twenty thousand, eight hundred and forty-three stockholders of record. The number of equitable or beneficial owners of stock registered in the name of mere nominees and dummies is still uncertain. Of the twenty thousand, eight hundred and forty-three stockholders of record only some five hundred and fifty-seven reside in the State of New Jersey. Of those remaining more than eighteen thousand reside in New York, and fifteen hundred in some thirty States throughout the Union and foreign countries, including Canada, Cuba, Greece, Switzerland, France, Monaco, Panama, Roumania, Jugo-Slavia and Italy. It is, therefore, obvious that personal service of the summons and complaint cannot be effected upon such non-resident stockholders in the State of New Jersey, and the courts of New Jersey can obtain jurisdiction over such stockholders only if they should voluntarily appear. Since the statute requires that every stockholder and every creditor shall be a necessary party, notice would have to be given each of said non-resident parties by mailing and by publication. Assuming that there are twelve hundred words in a newspaper column, and that notice would have to be published to four hundred twenty thousand non-resident defendants,

each with a proper and surname, the notice to be published would fill at least eighty newspaper pages of eight columns each. The cost of such publication, four weeks successively, would probably aggregate more than the total recoverable from the New Jersey stockholders, if it did not cost more than the aggregate which they owe. Moreover, a very large number of the stockholders of the Bank have paid their assessments in full. Many thousand others have entered into agreements providing for the payment of their assessments in installments. The stockholders residing in New York have all been sued and judgments have gone against many of them.

Broderick, Superintendent, &c., v. *Adamson*, 148 Misc. (N. Y.) 353;

Broderick, Superintendent, &c., v. *Aaron*, 147 Misc. (N. Y.) 854.

Many stockholders residing in foreign States have already been sued and judgment has gone against many. See

Broderick, Superintendent, &c., v. *Stephano*, 171 Atl. Rep. 582 (Pa.);

Broderick, Superintendent, &c., v. *McGuire*, 174 Atl. Rep. 314 (Conn.);

Broderick, Superintendent, &c., v. *American General Corporation*, 71 F. (2d) 864 (Md.).

Similarly, with few exceptions, litigations are in progress in all other jurisdictions where the remaining stockholders reside. This brief résumé of the status of the enforcement of the assessment establishes clearly (1) that if the requirement in the New Jersey statute that all creditors and all stockholders of the Bank are necessary parties to any litigation in that State to enforce the assessment, then the statute in effect prevents and prohibits the insti-

tution of any litigation in that jurisdiction to recover the assessment in violation of the requirements of Article IV, Section 1 of the Constitution of the United States as interpreted by the Supreme Court in

Bernheimer v. *Converse*, 206 U. S. 516;
Converse v. *Hamilton*, 224 U. S. 243;
Royal Arcanum v. *Green*, 237 U. S. 531;
Modern Woodmen of America v. *Mixer*, 267 U. S. 544; and
Hancock National Bank v. *Farnum*, 176 U. S. 640,

as well as the requirements of the Fourteenth Amendment of the Constitution of the United States:

Home Insurance Co. v. *Dick*, 281 U. S. 397, 407-8;
Sioux City Bridge Co. v. *Dakota County*, 260 U. S. 441;
Hartford Accident &c. Co. v. *Delta & Pine Land Co.*, 78 L. Ed. 767;
Nebbia v. *New York*, 78 L. Ed. 563;

and (2) in any event the requirement that all such persons be necessary parties is obviously unreasonable, harsh and oppressive, and through its burdensome and oppressive provisions in effect prevents enforcement of the assessment against stockholders of The Bank of United States in the State of New Jersey.

Sioux City Bridge Co. v. *Dakota County*, 260 U. S., 441.

JAMES D. CARPENTER, JR.,
Counsel for Appellant.